

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

SHERRIE T. MOORE,

Plaintiff,

v.

CAROLYN W. COLVIN, Acting  
Commissioner of Social Security  
Administration,

Defendant.

NO: 13-CV-0247-TOR

ORDER GRANTING DEFENDANT'S  
MOTION FOR SUMMARY  
JUDGMENT

BEFORE THE COURT are the parties' cross-motions for summary judgment (ECF Nos. 17 and 19). Plaintiff is represented by Sara M. Herr-Waldroup. Defendant is represented by Lisa Goldoftas. This matter was submitted for consideration without oral argument. The Court has reviewed the administrative record and the parties' completed briefing and is fully informed. For the reasons discussed below, the Court grants Defendant's motion and denies Plaintiff's motion.

1 JURISDICTION

2 The Court has jurisdiction over this case pursuant to 42 U.S.C. § 405(g);  
3 1383(c)(3).

4 STANDARD OF REVIEW

5 A district court's review of a final decision of the Commissioner of Social  
6 Security is governed by 42 U.S.C. § 405(g). The scope of review under §405(g) is  
7 limited: the Commissioner's decision will be disturbed "only if it is not supported  
8 by substantial evidence or is based on legal error." *Hill v. Astrue*, 698 F.3d 1153,  
9 1158-59 (9th Cir. 2012) (citing 42 U.S.C. § 405(g)). "Substantial evidence" means  
10 relevant evidence that "a reasonable mind might accept as adequate to support a  
11 conclusion." *Id.* at 1159 (quotation and citation omitted). Stated differently,  
12 substantial evidence equates to "more than a mere scintilla[,] but less than a  
13 preponderance." *Id.* (quotation and citation omitted). In determining whether this  
14 standard has been satisfied, a reviewing court must consider the entire record as a  
15 whole rather than searching for supporting evidence in isolation. *Id.*

16 In reviewing a denial of benefits, a district court may not substitute its  
17 judgment for that of the Commissioner. If the evidence in the record "is  
18 susceptible to more than one rational interpretation, [the court] must uphold the  
19 ALJ's findings if they are supported by inferences reasonably drawn from the  
20 record." *Molina v. Astrue*, 674 F.3d 1104, 1111 (9th Cir. 2012). Further, a district

1 court “may not reverse an ALJ’s decision on account of an error that is harmless.”  
2 *Id.* at 1111. An error is harmless “where it is inconsequential to the [ALJ’s]  
3 ultimate nondisability determination.” *Id.* at 1115 (quotation and citation omitted).  
4 The party appealing the ALJ’s decision generally bears the burden of establishing  
5 that it was harmed. *Shinseki v. Sanders*, 556 U.S. 396, 409-10 (2009).

#### 6 FIVE-STEP SEQUENTIAL EVALUATION PROCESS

7 A claimant must satisfy two conditions to be considered “disabled” within  
8 the meaning of the Social Security Act. First, the claimant must be “unable to  
9 engage in any substantial gainful activity by reason of any medically determinable  
10 physical or mental impairment which can be expected to result in death or which  
11 has lasted or can be expected to last for a continuous period of not less than twelve  
12 months.” 42 U.S.C. §§ 423(d)(1)(A); 1382c(a)(3)(A). Second, the claimant’s  
13 impairment must be “of such severity that he is not only unable to do his previous  
14 work[,] but cannot, considering his age, education, and work experience, engage in  
15 any other kind of substantial gainful work which exists in the national economy.”  
16 42 U.S.C. §§ 423(d)(2)(A); 1382c(a)(3)(B).

17 The Commissioner has established a five-step sequential analysis to  
18 determine whether a claimant satisfies the above criteria. *See* 20 C.F.R. §§  
19 404.1520(a)(4)(i)-(v); 416.920(a)(4)(i)-(v). At step one, the Commissioner  
20 considers the claimant’s work activity. 20 C.F.R. §§ 404.1520(a)(4)(i);

1 416.920(a)(4)(i). If the claimant is engaged in “substantial gainful activity,” the  
2 Commissioner must find that the claimant is not disabled. 20 C.F.R. §§  
3 404.1520(b); 416.920(b).

4 If the claimant is not engaged in substantial gainful activities, the analysis  
5 proceeds to step two. At this step, the Commissioner considers the severity of the  
6 claimant’s impairment. 20 C.F.R. §§ 404.1520(a)(4)(ii); 416.920(a)(4)(ii). If the  
7 claimant suffers from “any impairment or combination of impairments which  
8 significantly limits [his or her] physical or mental ability to do basic work  
9 activities,” the analysis proceeds to step three. 20 C.F.R. §§ 404.1520(c);  
10 416.920(c). If the claimant’s impairment does not satisfy this severity threshold,  
11 however, the Commissioner must find that the claimant is not disabled. *Id.*

12 At step three, the Commissioner compares the claimant’s impairment to  
13 several impairments recognized by the Commissioner to be so severe as to  
14 preclude a person from engaging in substantial gainful activity. 20 C.F.R. §§  
15 404.1520(a)(4)(iii); 416.920(a)(4)(iii). If the impairment is as severe or more  
16 severe than one of the enumerated impairments, the Commissioner must find the  
17 claimant disabled and award benefits. 20 C.F.R. §§ 404.1520(d); 416.920(d).

18 If the severity of the claimant’s impairment does meet or exceed the severity  
19 of the enumerated impairments, the Commissioner must pause to assess the  
20 claimant’s “residual functional capacity.” Residual functional capacity (“RFC”),

1 defined generally as the claimant's ability to perform physical and mental work  
2 activities on a sustained basis despite his or her limitations (20 C.F.R. §§  
3 404.1545(a)(1); 416.945(a)(1)), is relevant to both the fourth and fifth steps of the  
4 analysis.

5 At step four, the Commissioner considers whether, in view of the claimant's  
6 RFC, the claimant is capable of performing work that he or she has performed in  
7 the past ("past relevant work"). 20 C.F.R. §§ 404.1520(a)(4)(iv);  
8 416.920(a)(4)(iv). If the claimant is capable of performing past relevant work, the  
9 Commissioner must find that the claimant is not disabled. 20 C.F.R. §§  
10 404.1520(f); 416.920(f). If the claimant is incapable of performing such work, the  
11 analysis proceeds to step five.

12 At step five, the Commissioner considers whether, in view of the claimant's  
13 RFC, the claimant is capable of performing other work in the national economy.  
14 20 C.F.R. §§ 404.1520(a)(4)(v); 416.920(a)(4)(v). In making this determination,  
15 the Commissioner must also consider vocational factors such as the claimant's age,  
16 education and work experience. *Id.* If the claimant is capable of adjusting to other  
17 work, the Commissioner must find that the claimant is not disabled. 20 C.F.R. §§  
18 404.1520(g)(1); 416.920(g)(1). If the claimant is not capable of adjusting to other  
19 work, the analysis concludes with a finding that the claimant is disabled and is  
20 therefore entitled to benefits. *Id.*

1 The claimant bears the burden of proof at steps one through four above.  
2 *Lockwood v. Comm’r of Soc. Sec. Admin.*, 616 F.3d 1068, 1071 (9th Cir. 2010). If  
3 the analysis proceeds to step five, the burden shifts to the Commissioner to  
4 establish that (1) the claimant is capable of performing other work; and (2) such  
5 work “exists in significant numbers in the national economy.” 20 C.F.R. §§  
6 404.1560(c); 416.960(c)(2); *Beltran v. Astrue*, 700 F.3d 386, 389 (9th Cir. 2012).

#### 7 ALJ’S FINDINGS

8 Plaintiff filed applications for disability insurance benefits and supplemental  
9 security income disability benefits on July 14, 2009, alleging a disability onset date  
10 of January 1, 2006. Tr. 170-72; 173-75. These applications were denied initially  
11 and upon reconsideration, and Plaintiff requested a hearing. Tr. 73-75, 80-83; 89-  
12 91, 94-95; 99-100. A hearing was held before an Administrative Law Judge on  
13 November 14, 2011. Tr. 39-68. The ALJ rendered a decision denying Plaintiff  
14 benefits on February 16, 2012. Tr. 14-25.

15 The ALJ found that Plaintiff met the insured status requirements of Title II  
16 of the Social Security Act through March 31, 2007. Tr. 16. At step one, the ALJ  
17 found that Plaintiff had not engaged in substantial gainful activity since January 1,  
18 2006, the alleged onset date. *Id.* At step two, the ALJ found that Plaintiff had  
19 severe impairments, *id.*, but, at step three, the ALJ found that Plaintiff’s severe  
20

1 impairments did not meet or medically equal a listed impairment. Tr. 17-19. The  
2 ALJ then determined that Plaintiff had the residual functional capacity to:

3 [P]erform light work as defined in 20 CFR 404.1567(b) and  
4 416.967(b) except she can occasionally crawl, crouch, stoop, kneel,  
5 balance, and climb ramps and stairs; she should never climb ladders,  
6 ropes, or stairs; she should avoid concentrated exposure to pulmonary  
irritants; she could perform no more than lower semiskilled tasks  
(SVP3); and she should have no more than occasional superficial  
contact with the general public.

7 Tr. 19. At step four, the ALJ found that Plaintiff was capable of performing past  
8 relevant work as a housekeeping cleaner. Tr. 23-24. In light of the step four  
9 finding, the ALJ concluded that Plaintiff was not disabled under the Social  
10 Security Act and denied her claims on that basis. Tr. 24-25.

11 The Appeals Council denied Plaintiff's request for review (Tr. 10) on April  
12 9, 2013, making the ALJ's decision the Commissioner's final decision for purposes  
13 of judicial review. Tr. 5-9; 20 C.F.R. §§ 404.981, 416.1484, and 422.210. On  
14 June 5, 2013, the Appeals Council extended the time within which Plaintiff could  
15 file a civil action by 30-days. Tr. 1-2.

## 16 ISSUES

17 Plaintiff raises three issues for review:

- 18 1. Whether the ALJ properly determined Ms. Moore has past relevant  
19 work as a housekeeper;
- 20 2. Whether the ALJ properly found Ms. Moore not credible; and

1 3. Whether the ALJ's RFC is valid.

2 ECF No. 17 at 1. In her reply brief, Plaintiff abandoned a fourth issue concerning  
3 her request for a remand based upon the new evidence she submitted to the  
4 Appeals Council, ECF No. 24 at 2.

5 DISCUSSION

6 **A. Substantial Gainful Activity as a Housekeeping Cleaner**

7 Plaintiff argues that because none of her earnings reached the presumptive  
8 threshold to be considered substantial gainful activity, her work as a housekeeper  
9 cleaner did not comprise substantial gainful activity. ECF No. 17 at 9-11. She  
10 further argues that she did not sign or otherwise affirm the information on a form  
11 on which the ALJ relied. ECF No. 24 at 3. The Court disagrees.

12 At step four, the claimant bears the burden of showing that he or she does  
13 not have the residual functional capacity to engage in "past relevant work." *Lewis*  
14 *v. Apfel*, 236 F.3d 503, 515 (9th Cir. 2001) (citations omitted). The ALJ assesses  
15 whether an individual's impairments prevent her from doing past relevant work. 20  
16 C.F.R. §§ 404.1520(f), 416.920(f). "A job qualifies as past relevant work only if it  
17 involved substantial gainful activity." *Lewis*, 236 F.3d at 515 (citations omitted);  
18 20 C.F.R. §§ 404.1560, 404.1565, 416.960, 416.965. The ALJ compares the  
19 residual functional capacity assessment with the physical and mental demands of  
20



1 an individual's past relevant work, and she will be found not disabled if she can  
2 "still do this kind of work." 20 C.F.R. §§ 404.1520(f), 416.920(f).

3 Here, the ALJ made the following findings:

4 The claimant testified that she worked as a housekeeper from 2002  
5 until 2005 (Ex. 3E, pp. 1, 3; 13E). As a housekeeper, the claimant  
6 cleaned hotel rooms and prepared the rooms for guests (Ex. 3E, p. 3).  
7 She reported that she earned \$8.00 per hour and worked eight hours a  
8 day five days per week (Ex. 3E, p. 3). In order to be considered past  
9 relevant work, an individual's previous jobs or occupations must meet  
10 recency, duration, and substantial gainful activity requirements to be  
11 considered past relevant work. This job meets the recency requirement  
12 as it occurred within the past 15 years. The vocational expert testified  
13 that the claimant's work as a housekeeper most closely correlated to  
the occupation of Housekeeping Cleaner (323.687-014) under the  
Dictionary of Occupational Titles (DOT) and carried a specific  
vocational preparation (SVP) of two. The claimant's work as a hotel  
clerk lasted over two years, indicating that she worked sufficient time  
to meet the SVP for said occupation. Although there were no posted  
earnings since 2004, the undersigned finds that the cumulative  
earnings and duration of the work do rise to the level of SGA and so  
finds that the claimant's work as a hotel clerk meets all three  
requirements of past relevant work (Ex. 3D).

14 Tr. 24. Plaintiff testified that she filled out the questionnaire that specified she was  
15 a housekeeper at a hotel from 2003 to 2006. Tr. 62; 194. Despite Plaintiff's  
16 present disavowal of the information in this form, the ALJ received this  
17 information into evidence without objection from Plaintiff at the administrative  
18 hearing. Tr. 42. Furthermore, other records show that Plaintiff worked at the Best  
19 Western from May 2002 to 2005. Tr. 251. The Court recognizes that it is not  
20 uncommon to have a failure of precise recollection, especially for specific dates.

1 Finally, however, the Court observes that Plaintiff's reported income included  
2 \$1,491.75 in 2002 from Mr. Tramp at Princess Properties; \$2,984.25 in 2002 from  
3 Chelan-Douglas County Community Action Council; \$8,546.90 in 2003 from Mr.  
4 Tramp; and \$2,630.15 in 2004 from Mr. Tramp. Tr. 178-79 (The records do not  
5 reveal earnings for any particular month.) Plaintiff admitted that Mr. Tramp was  
6 her boss for her housekeeping work. Tr. 62. Accordingly, the Court rejects  
7 Plaintiff's argument. The record contains substantial evidence to support the  
8 ALJ's findings, including, most importantly, the Plaintiff's testimony and  
9 representations at the administrative level that she was working five days a week  
10 for eight hours a day at the rate of \$8 an hour.

#### 11 **B. Adverse Credibility Determination**

12 In social security proceedings, a claimant must prove the existence of  
13 physical or mental impairment with "medical evidence consisting of signs,  
14 symptoms, and laboratory findings." 20 C.F.R. §§ 416.908; 416.927. A  
15 claimant's statements about his or her symptoms alone will not suffice. 20 C.F.R.  
16 §§ 416.908; 416.927. Once an impairment has been proven to exist, the claimant  
17 need not offer further medical evidence to substantiate the alleged severity of his or  
18 her symptoms. *Bunnell v. Sullivan*, 947 F.2d 341, 345 (9th Cir. 1991) (en banc).  
19 As long as the impairment "could reasonably be expected to produce [the]  
20 symptoms," the claimant may offer a subjective evaluation as to the severity of the

1 impairment. *Id.* This rule recognizes that the severity of a claimant's symptoms  
2 "cannot be objectively verified or measured." *Id.* at 347 (quotation and citation  
3 omitted).

4 If an ALJ finds the claimant's subjective assessment unreliable, "the ALJ  
5 must make a credibility determination with findings sufficiently specific to permit  
6 [a reviewing] court to conclude that the ALJ did not arbitrarily discredit claimant's  
7 testimony." *Thomas v. Barnhart*, 278 F.3d 947, 958 (9th Cir. 2002). In making  
8 this determination, the ALJ may consider, *inter alia*: (1) the claimant's reputation  
9 for truthfulness; (2) inconsistencies in the claimant's testimony or between his  
10 testimony and his conduct; (3) the claimant's daily living activities; (4) the  
11 claimant's work record; and (5) testimony from physicians or third parties  
12 concerning the nature, severity, and effect of the claimant's condition. *Id.*; *see also*  
13 *Tommasetti v. Astrue*, 533 F.3d 1035, 1039 (9th Cir. 2008) (The ALJ may consider  
14 many factors in weighing a claimant's credibility, including "(1) ordinary  
15 techniques of credibility evaluation, such as the claimant's reputation for lying,  
16 prior inconsistent statements concerning the symptoms, and other testimony by the  
17 claimant that appears less than candid; (2) unexplained or inadequately explained  
18 failure to seek treatment or to follow a prescribed course of treatment; and (3) the  
19 claimant's daily activities.") (citation omitted). If there is no evidence of  
20 malingering, the ALJ's reasons for discrediting the claimant's testimony must be

1 “specific, clear and convincing.” *Chaudhry v. Astrue*, 688 F.3d 661, 672 (9th Cir.  
2 2012) (quotation and citation omitted). The ALJ “must specifically identify the  
3 testimony she or he finds not to be credible and must explain what evidence  
4 undermines the testimony.” *Holohan v. Massanari*, 246 F.3d 1195, 1208 (9th Cir.  
5 2001).

6 Plaintiff argues the ALJ erroneously found her not credible based upon the  
7 gaps in her treatment (ECF No. 17 at 12-14), her activities of daily living (*id.* at 14-  
8 16), inconsistencies in her testimony (*id.* at 17) and the lack of objective evidence  
9 (*id.* at 17-18).

10 Here, the ALJ contrasted Plaintiff’s complaints of total debilitating pain with  
11 her treatment record. The ALJ observed that in October 2007, Dr. Feinman noted  
12 that after an iron infusion, Plaintiff was feeling better. Tr. 21. Then, there was a  
13 minor gap in treatment until March 2008, when Plaintiff saw ARNP Bouton for  
14 complaints of pain. *Id.* Yet, Plaintiff had a normal gait and full range of motion.  
15 *Id.* Plaintiff reported increased pain in August 2008, yet she had “no tenderness  
16 with palpation of the spinal process of the cervical, thoracic, and lumbar spine” . . .  
17 and “full flexion and extension of her low back without pain, full flexion of her  
18 hips without pain bilaterally, and a negative straight leg raise test.” *Id.*

19 The ALJ observed another gap in treatment until January 2009, when she  
20 saw Dr. Derrick. *Id.* Dr. Derrick advised her to “discontinue smoking, which she

1 refused” and she “refused to try samples of medication to help her fibromyalgia  
2 pain for fear of a bad reaction in her stomach.” *Id.*

3 Plaintiff’s gaps in treatment, combined with her apparent unwillingness to  
4 follow treatment and the lack of objective findings are legitimate reasons to  
5 discount Plaintiff’s claims of total disability. The ALJ’s findings are supported by  
6 substantial evidence and constitute specific, clear and convincing reasons for  
7 discounting Plaintiff’s testimony.

8 There are two grounds for using daily activities to form the basis for an  
9 adverse credibility determination. *See Orn v. Astrue*, 495 F.3d 625, 639 (9th Cir.  
10 2007). First, the daily activities may just contradict claimant’s other testimony.  
11 *Id.*; *Molina v. Astrue*, 674 F.3d 1104, 1113 (9th Cir. 2012) (“whether the claimant  
12 engages in daily activities inconsistent with the alleged symptoms”) (citation  
13 omitted). Second, daily activities may be grounds for an adverse credibility  
14 finding if a claimant is able to spend a substantial part of h[er] day engaged in  
15 pursuits involving the performance of physical functions that are transferable to a  
16 work setting. *Orn*, 495 F.3d at 639.

17 Here, the ALJ clearly used the first ground to discount Plaintiff’s credibility,  
18 not the second as Plaintiff contends. The ALJ observed e.g., that despite Plaintiff’s  
19 claim of total disability in October 2007, she reported to Dr. Feinman that she was  
20 walking four to five times a day about a mile each trip to walk her dog. Tr. 21.

1 The ALJ found that Plaintiff has mild limitations in her daily activities; she is able  
2 to take care of her household chores twice a week and prepare daily meals for  
3 herself; she is able to manage her own funds and goes shopping for food and  
4 personal products once a month for three hours; she walks her dog; she is able to  
5 take care of her home, use the computer daily, engage in basic food preparation,  
6 and manage her own finances; she plays video games on her computer for two  
7 hours every day in the morning, goes to the dog park, returns home to use her  
8 computer or crochet until lunch, goes back to the dog park, watches television,  
9 does chores, and plays on her computer again before bed; in 2008, she home  
10 schooled her minor son who has disabilities; and she takes care of her mother who  
11 has Alzheimer's. Tr. 18.

12 The ALJ also recounted the several medical examinations that continually  
13 showed unremarkable findings and full range of motion. Tr. 19-23. These are  
14 specific, clear and convincing reasons for discounting Plaintiff's testimony.

### 15 **C. The Validity of the ALJ's RFC Determination**

16 Plaintiff argues that ALJ's RFC determination was erroneously decided  
17 because the ALJ improperly weighed the medical opinions upon which it was  
18 based. ECF No. 17 at 18-23. Plaintiff also clarified, in reply, that the six  
19  
20

1 additional medical opinions submitted to the Appeals Council (Tr. 407-28) should  
2 be considered by the Court in reviewing this issue.<sup>1</sup> ECF No. 24 at 2.

3 There are three types of physicians: “(1) those who treat the claimant  
4 (treating physicians); (2) those who examine but do not treat the claimant  
5 (examining physicians); and (3) those who neither examine nor treat the claimant  
6 [but who review the claimant's file] (nonexamining [or reviewing] physicians).”  
7 *Holohan v. Massanari*, 246 F.3d 1195, 1201-02 (9th Cir. 2001) (citations omitted).  
8 Generally, a the opinion of a treating physician carries more weight than the  
9 opinion of an examining physician, and the opinion of an examining physician  
10 carries more weight than the opinion of a reviewing physician. *Id.* In addition, the  
11 Commissioner’s regulations give more weight to opinions that are explained than

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12 <sup>1</sup> As a threshold matter, the Court finds that it may properly consider these  
13 opinions since the Appeals Council considered them in denying Plaintiff's request  
14 for review and incorporated them into the administrative record. Tr. 9; *see Brewes*  
15 *v. Comm'r of Soc. Sec. Admin.*, 682 F.3d 1157, 1162–63 (9th Cir. 2012) (“[W]e  
16 hold that when the Appeals Council considers new evidence in deciding whether to  
17 review a decision of the ALJ, that evidence becomes part of the administrative  
18 record, which the district court must consider when reviewing the Commissioner's  
19 final decision for substantial evidence.”).

1 to opinions that are not, and to the opinions of specialists on matters relating to  
2 their area of expertise over the opinions of non-specialists. *Id.* (citations omitted).

3 If a treating or examining physician's opinion is uncontradicted, an ALJ may  
4 reject it only by offering "clear and convincing reasons that are supported by  
5 substantial evidence." *Bayliss v. Barnhart*, 427 F.3d 1211, 1216 (9th Cir. 2005).  
6 "If a treating or examining doctor's opinion is contradicted by another doctor's  
7 opinion, an ALJ may only reject it by providing specific and legitimate reasons  
8 that are supported by substantial evidence." *Id.* (citing *Lester v. Chater*, 81 F.3d  
9 821, 830-831 (9th Cir. 1995)). Regardless of the source, an ALJ need not accept a  
10 physician's opinion that is "brief, conclusory and inadequately supported by  
11 clinical findings." *Bray v. Comm'r of Soc. Sec. Admin.*, 554 F.3d 1219, 1228 (9th  
12 Cir. 2009) (quotation and citation omitted).

13 First, Plaintiff contends the ALJ improperly rejected Mr. Franzen's opinions.  
14 ECF No. 17 at 20-22. Mr. Franzen is a physical therapist and as such is considered  
15 an "other source." 20 C.F.R. §§ 404.1513(d); 416.913(d). Because Mr. Franzen is  
16 an "other source" whose opinions about the nature and severity of Plaintiff's  
17 impairments are not entitled to controlling weight, the ALJ need only have  
18 provided "germane reasons" for rejecting his opinions. SSR 06-03p, 2006 WL  
19 2329939 at \*2; *Molina v. Astrue*, 674 F.3d 1104, 1111 (9th Cir. 2012).



1 Mr. Franzen opined that Plaintiff was capable of performing sedentary work  
2 on a part-time basis, and was mostly “limited by her poor physical fitness level and  
3 respiratory condition.” Tr. 258. He recommended a home exercise program, which  
4 “should help improve her tolerance for daily and work activities.” *Id.*; Tr. 427.  
5 The Court observes that Mr. Franzen’s additional State DSHS form submitted to  
6 the Appeals Council is dated June 25, 2007, the same date as his original report  
7 and is not substantially different than what was reported there. Tr. 426-428.

8 Here, the ALJ gave little weight to the opinion of Mr. Franzen because his  
9 opinion as to Plaintiff’s functional limitations were not supported by “stable  
10 objective medical findings.” Tr. 21, 257-58. Mr. Franzen did not opine as to the  
11 length of Plaintiff’s disability but did opine that she would improve. Thus, the  
12 ALJ properly gave germane reasons for discounting Mr. Franzen’s conclusion.

13 Plaintiff next contends the ALJ gave little weight to the opinion of Thomas  
14 Rowe, Ph.D. ECF No. 17 at 20. Plaintiff provides no other argument concerning  
15 Dr. Rowe, and as such the Court can decline to further address this issue. *See*  
16 *Carmickle v. Comm’r, Soc. Sec. Admin.*, 533 F.3d 1155, 1161 n. 2 (9th Cir. 2008)  
17 (declining to address plaintiffs argument “because [plaintiff] failed to argue this  
18 issue with any specificity in his briefing.”). Nonetheless, the Court will briefly  
19 address Plaintiff’s contention that has now only been raised in her reply brief.  
20

1       The ALJ provided the following specific and legitimate reasons for  
2       discounting Dr. Rowe's opinion that Plaintiff would never return to the workforce,  
3       because his opinion was contradicted by: "her self-reports of extremely dynamic  
4       activities of daily living including video games, puzzles, crocheting, preparing  
5       meals, and keeping up with her household chores;" his observation that Plaintiff  
6       "had good conversational attention and concentration with clear thought processes  
7       and no evidence of a thought disorder;" Dr. Rowe "did not review her medical  
8       records;" and her assigned GAF score was inconsistent with Plaintiff's activities of  
9       daily living. Tr. 22. These findings are supported by substantial evidence in the  
10      record, thus, no error has been shown.

11      Plaintiff contends the ALJ failed to provide specific and legitimate reasons  
12      to reject those findings of Dr. Derrick's which were inconsistent with the ALJ's  
13      RFC assessment. ECF No. 17 at 22-23. Plaintiff argues that the ALJ's mere  
14      summary of the evidence does not meet the requirement that she give specific and  
15      legitimate reasons to reject those findings inconsistent with her RFC. ECF No. 24  
16      at 7. However, the Plaintiff identifies no specific RFC the ALJ rejected. Indeed,  
17      the ALJ gave significant weight to the opinions and observations of Dr. Derrick  
18      where they are . . . . based on objective findings. Tr. 22. Despite Plaintiff's  
19      argument to the contrary, "[o]ne way that an ALJ can give specific, legitimate  
20      reasons for rejecting controverted medical opinions is by summarizing the

1 conflicting evidence in detail and interpreting it.” *See Magallanes v. Bowen*, 881  
2 F.2d 747, 751 (9th Cir. 1989). While the additional evidence submitted to the  
3 Appeals Council only included Dr. Derrick’s check box forms opining that  
4 Plaintiff was limited to sedentary work, Tr. 409; 419, it did not include any  
5 additional objective evidence. Thus, no error has been shown.

6 Lastly, Plaintiff contends the opinions of reviewing consultants, Drs.  
7 Scottolini, Flanagan and Mee, are not substantial evidence upon which to base the  
8 rejection of the additional limitations found by treating and examining sources,  
9 including the opinion of Mr. Franzen and those opinions submitted to the Appeals  
10 council for the first time. ECF No. 24 at 8. Plaintiff cites *Lester v. Chater*, 81 F.3d  
11 821 (9th Cir. 1995), for the proposition that the opinion of a reviewing physician,  
12 Dr. Scottolini, cannot constitute substantial evidence that justifies rejection of the  
13 opinion of a treating physician, Dr. Derrick. ECF No. 17 at 23. But *Lester*  
14 recognized the rule applies if “nothing more” is used to substantiate the rejection of  
15 a treating physician’s opinion. 81 F.3d at 831. In *Lester*, the Ninth Circuit  
16 explained, “in rejecting the opinion of a treating physician, ‘the ALJ did not rely  
17 on [the nonexamining physician’s] testimony *alone* to reject the opinions of  
18 [claimant’s] treating physicians....’ Rather, as we pointed out, there was an  
19 abundance of evidence that supported the ALJ’s decision: the ALJ also relied on  
20 laboratory test results, on contrary reports from examining physicians, and on

1 testimony from the claimant that conflicted with her treating physician's opinion.”

2 *Lester*, 81 F.3d at 831 (emphasis in original, citations omitted).

3 Here, the ALJ properly discounted Mr. Franzen’s opinion, discounted  
4 Plaintiff’s credibility and explained the significance of Dr. Derrick’s underlying  
5 records and findings.

6 While crediting Drs. Flanagan and Mee, the ALJ discussed ARNP Michael  
7 Haley’s records. The ALJ found that there was very little evidence in the record  
8 from only four sessions in 2010, that Mr. Haley did not state or even imply that the  
9 claimant's functionality was reduced as a result of any mental impairment, and that  
10 Plaintiff reported to Mr. Haley that she was going through menopause and thinks  
11 that is what was causing most of her irritability and mood swings. Tr. 23. For  
12 these reasons supported by substantial evidence in the record, it was not erroneous  
13 for the ALJ to credit the reviewing doctors’ opinions over Mr. Haley, an “other  
14 source.” Once again, the conclusory opinions submitted to the Appeals Council  
15 do not denigrate the objective findings contained in the record. No error has been  
16 shown here.

17 Defendant is entitled to summary judgment.

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19 ///

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**IT IS HEREBY ORDERED:**

1. Plaintiff's Motion for Summary Judgment (ECF No. 17) is **DENIED**.
2. Defendant's Motion for Summary Judgment (ECF No. 19) is  
**GRANTED**.

The District Court Executive is hereby directed to file this Order, enter Judgment for Defendant, provide copies to counsel, and **CLOSE** the file.

**DATED** August 12, 2014.



*Thomas O. Rice*  
THOMAS O. RICE  
United States District Judge